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Senate

Statement of Senator Dianne Feinstein

*“On the Vote to Confirm of J. Leon Holmes for District
Court Judge for the Eastern District of Arkansas”*

Mrs. FEINSTEIN. Mr. President, I come to the floor to share my views on this nominee to the Federal district court. I heard our distinguished chairman, a man whom I greatly respect and admire, mention he was recommended as well qualified by the American Bar Association, and that he in fact could distance himself from his personal beliefs; that he is a deeply religious man, and the chairman believed he would be able to truly distance himself.

I have a very hard time believing that. If I look at his personal beliefs, they are extraordinary and they are way out of line with the mainstream of American thinking. I want to comment a little bit about them. They are not only

outside the mainstream of American thinking, but they are outside the mainstream of American judicial thought as well.

Mr. Holmes has no real judicial experience. That is what makes it difficult, because there is no way we know whether he can distance himself from many of the comments he has made over many years. He is a native of Arkansas. He is a practicing lawyer at a law firm. He has done some teaching at the University of Arkansas and at the Thomas Aquinas College in my State of California.

With the exception of two instances where he served as a special judge on the Arkansas Supreme Court, he has no judicial experience. But that is not

my main objection. My main objection is over the past 24 years he has put forward in word and writing philosophies that are far from U.S. mainstream opinion on a whole series of subjects, from women's rights, to choice, to race, and to the separation of church and state. These statements make him a very troubling nominee, and I have never -- again, never -- before voted “no” on a nominee to the district court. This is my first “no” vote in the 12 years I have been on the Judiciary Committee.

Let me give you a few examples. Let me take a subject, women's rights. Seven years ago -- it is not too long ago -- seven years ago he wrote:

“The wife is to subordinate herself to her husband,” and that “the woman is to place herself under the authority of the man.”

This belief, if sustained, clearly places this nominee in a place apart. But this is not merely my own view, it is the view of the equal protection clause of the 14th Amendment of the Constitution, which I would hope any Federal judge would uphold.

It is also the view of numerous Federal civil rights laws, including the Civil Rights Act of 1964, for which the Nation celebrated its 40th anniversary on July 2. How can I or any other American believe that one who truly believes a woman is subordinate to her spouse can interpret the Constitution fairly? When women are parties to claims of job discrimination, sexual harassment, domestic violence, and a host of other issues involving the role of women in society, how can I be assured they can get a fair hearing from Leon Holmes? What will a

plaintiff think when she finds out the judge hearing her case thinks women should subordinate themselves to men?

That is a fairly crisp view. It is a view I have not seen presented, certainly in the last 20 years, in any serious way.

Let’s take a woman’s right to choose. Again and again over decades, Mr. Holmes has made comments that show he is solidly opposed to a woman’s right to choose, even in the case of rape. Let me give an example.

In a letter that he wrote to the *Moline Daily Dispatch* -- this is a letter he writes to a newspaper -- Mr. Holmes called rape victims who become pregnant “trivialities.”

How is a rape victim ever a triviality?

He wrote in that same letter that “concern for rape victims is a red herring because conceptions from rape occur with approximately the same

frequency as snowfall in Miami.”

That might be a cute phrase but, in fact, it is grossly incorrect. Snow falls in Miami about once every 100 years, but, according to the *American Journal of Obstetrics and Gynecology*, each year in America over 30,000 women become pregnant as a result of rape or incest. This is hardly a trivial matter.

Mr. Holmes’s letter wasn’t a one-time comment. I can excuse a lot of one-time comments. I understand how they happen. I understand how they can be taken out of context. But he has also been an opponent of a woman’s right to choose for decades. Other comments he has made on the very sensitive issue of abortion are equally insensitive. For example, he said:

“I think the abortion issue is the simplest issue this country has faced since slavery was made unconstitutional, and it deserves the same response.”

In other words, end it. It is a very precise point of view.

Mr. Holmes has stated:

“The pro-abortionists counsel us to respond to these problems by abandoning what little morality our society still recognizes. This was attempted by one highly sophisticated, historically Christian nation in our history -- Nazi Germany.”

In a 1987 article written to the *Arkansas Democrat*, Mr. Holmes wrote:

“[T]he basic purpose of government is to prevent the killing of innocent people, so the government has an obligation to stop abortion.”

Seven years later, in a 1995 interview, with the *Arkansas Democrat Gazette*, Mr. Holmes stated:

“I would like to appear before the Supreme Court of the United States, and I would like to have argued *Roe v. Wade*.”

In response to Senator Durbin’s written question asking what Supreme Court cases Mr. Holmes disagrees with, he answered: *Dred Scott v. Sanford*, *Buck v. Bell*, and *Roe v. Wade*.

Dred Scott held that blacks were not people under the Constitution. As you know, *Buck v. Bell* held that a woman could be sterilized against her will. Those cases were abominations.

To include *Roe v. Wade* with these two decisions clearly indicates that he holds *Roe* as a decision to be abolished. This is simply not a mainstream perspective.

These comments don’t sound as if they come from a man with an open mind about a most sensitive issue. Rather, they sound as if they come from a man with an agenda to eliminate the constitutional rights of American women to choose.

That is a problem for me because I don’t believe someone who has these views can fairly hand out

justice. I don’t believe such a person should be a Federal judge for the rest of his life.

Mr. Holmes is not merely opposed to a woman’s constitutionally protected right to choose. He has also lashed out at contraception, against women generally, and against the rights of gays and lesbians. He wrote in 1997:

“It is not coincidental that the feminist movement brought with it artificial contraception and abortion on demand, with recognition of homosexual liaisons soon to follow.”

That is emotion-laden language. It is offensive to a whole host of a number of people. It is extraordinary language. It certainly is not a line of thinking with which I can agree. These are all areas where the Federal courts play a vital role.

He has also made some shocking statements about race in America. Specifically, in a 1981 article, he wrote for a

journal called *Christianity Today* about Booker T. Washington. This is what he wrote:

“He taught that God had placed the Negro in America so it could teach the white race by example what it means to be Christlike. Moreover, he believed that God could use the Negroes’ situation to uplift the white race spiritually.”

Mr. Holmes first wrote those words 23 years ago. But he still stands by them. In April of last year, Leon Holmes wrote to Senator Lincoln:

“My article combines [Washington’s] view of providence -- that God brings good out of evil -- with his view that we are all called to love one another. This teaching can be criticized only if it is misunderstood.”

Are these the words of a man who should be confirmed to interpret the equal protection clause of our Constitution without prejudice, to interpret the due process clause, to

interpret Federal civil rights statutes?

In my view, Mr. Holmes’s statements also indicate that he can’t separate his own religious views from the Federal law he will be charged with interpreting. This is a trait that is particularly dangerous, given the strong views he has taken.

On religion, in a speech he delivered 2 years ago in Anne Arbor, Michigan, he stated:

“Christianity, unlike the pagan religions, transcends the political order.”

That is really food for thought.

He continues:

“Christianity, in principle, cannot accept subordination to the political authorities, for the end to which it directs men is higher than the end of the political order; the source of its authority is higher than the political authority.”

I guess one could say that all depends on what he means by the political order. The political order produces the law and the court interprets the law.

If he is saying the political order which produces the law is subservient to Christianity, how can we feel this is going to be an open-minded judge?

He also stated in the same speech that he was “left with some unease about this notion that Christianity and the political order should be assigned to separate spheres, in part because it seems unavoidably ambiguous.”

I have no desire to cause Mr. Holmes any additional “unease.” But if he is confirmed today, that is what he will have, whenever a question about the separation of church and state comes before him. The First Amendment in reality is not “ambiguous.” It clearly states that there shall be “no law respecting an establishment of religion.”

My concerns go further than First Amendment cases. If Mr. Holmes becomes a U.S. district court judge, how can we be sure he will separate his faith from the law? How will the parties before him know he is basing his rulings on the U.S. Constitution rather than on his spiritual faith?

This is not a statement on belief. I respect Mr. Holmes's right to his own faith, and I generally believe that a strong and abiding faith is a positive, not a negative, factor in reviewing an individual for public service. But here, where a nominee has himself said that faith must trump the law, it would be troubling at best to grant that nominee a lifetime seat on a Federal bench where law must trump all else, if our system of justice is to work.

Mr. Holmes's disconcerting views about the Constitution go beyond what he thinks about a particular area of law. He has expressed support for the concept of natural law, which holds there are laws

that trump the law of the Constitution.

Natural law, simply put, holds that the Constitution is not the supreme law of the land. Rather, those who believe in natural law would subordinate the Constitution to some higher law. This concept is starkly at odds with the role of a Federal judge, who must swear to uphold the Constitution. But Mr. Holmes says that natural law trumps, as I understand it, the Constitution which he takes an oath to uphold.

In an article three years ago, in 2001, he wrote:

“[T]he Constitution was intended to reflect the principles of natural law.”

In response to a written question from Senator Durbin, Mr. Holmes wrote:

“[M]y view of natural rights derives from the Declaration of Independence.”

Now the Declaration of Independence, which all Americans joyfully

celebrated this past weekend, is the source of our Nation's liberation. The Constitution is the source of our Government and our laws. So they are separate and distinct from one another. This is a critical distinction, and I am not sure Mr. Holmes appreciates that. If he reads natural law into the Constitution, then he is not reading the same Constitution as the rest of America.

There is one final issue I would like to address. At the end of last month, on June 24, we confirmed six judges in a single day. Since the accommodation of the White House, the Senate has confirmed 24 of the 25 judges to which we agreed to proceed to floor votes. We have confirmed 28 nominations this year alone, including 5 circuit court nominations. And the Senate has confirmed 197 judges since President Bush was elected as our President.

I have always maintained my own counsel when it comes to the confirmation of judicial nominees. I do

not use my blue slip. I do not make a decision until after the individual has a hearing and generally until after he or she has answered the written questions. I have always tried to see the potential for good in the nominees who come to us. When the President nominates a person to the Senate, it is my feeling we should do everything we can to respect the President's choices, while still taking with the utmost seriousness our own constitutional obligation to advise and consent.

To that end, as I said before, I have never before opposed a nominee to a U.S. district court. I have also supported nominees to the Court of Federal Claims -- Susan Braden, Charles Lettow, and Victor Wolski -- whom other Democrats opposed.

Even at the level of the U.S. Court of Appeals, I have supported nominees whom others have opposed. I supported the nomination of Jeffrey Sutton to the Sixth Circuit, and I was the only

Democrat on the Judiciary Committee to do so. I supported the nomination of John Roberts to the DC Circuit, even though three Democrats on the Judiciary Committee opposed him. I supported the nomination of Deborah Cook, also to the Sixth Circuit, when many of my colleagues voted against her.

In all of these instances, I had confidence the nominees would interpret the Constitution and the Nation's laws fairly and without bias. And that is all I ask. I would expect these nominees to be conservative, and that is not a problem, as long as their views are not contrary to what a majority of Americans believe and the judicial thinking of a majority of mainstream judges. But I do not feel that way about Mr. Holmes.

I have no doubt he is a man of deep and sincere beliefs, and in this great Nation he is entitled to those beliefs. I commend him for his faith. But how can I entrust protection of separation of church and

state, protection of the civil rights laws, protection of a woman's right to choose -- all of the major values which come before a Federal court judge -- with the comments he has made? Because these comments are robustly extraordinary. I would never dream of these comments being made by someone who aspires to be on a Federal court of law. And if you have no judicial experience by which to evaluate whether he can in fact separate himself from his views, it is a very difficult nomination to swallow.

As a woman, how can I possibly vote for someone to go on to a Federal district court who believes women should be subordinate to men, when that judge is going to have to look at employment discrimination, sexual harassment cases, who in the modern day and age, as a practical tenet of public thinking, believes -- and believes strongly enough to write about it and say it to the world -- that women should be subordinate to men and a wife should be

subordinate to her husband,
and expect any woman
who comes before that
judge is going to have fair
and even treatment?

For over 20 years,
Mr. Holmes has been
making extremist
statements on women, on
race, on abortion, on the
role of religion in society.
His statements in each
individual area, as I have
said, are startling. Taken
together, he has given us
more than enough reason to
fear he will continue to
make radical statements
when his words have the
force of law. And that is a
risk I, for one, do not want
to take.

So I urge my colleagues
today to join me in
opposing this confirmation
and voting no. It will be
my first one in 12 years.

I yield the floor.